
HOUSE BILL No. 1166

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-6-5.

Synopsis: Notice of business closure or mass layoff. Requires certain employers to give certain written notice to affected employees before plant closings and mass layoffs that occur after August 31, 2009.

Effective: July 1, 2009.

Tyler

January 12, 2009, read first time and referred to Committee on Labor and Employment.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1166

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-6-5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:
4 **Chapter 5. Employer Notification Before Plant Closings and**
5 **Mass Layoffs**
6 **Sec. 1. This chapter applies to plant closings and mass layoffs**
7 **that occur after August 31, 2009.**
8 **Sec. 2. As used in this chapter, "affected employee" means an**
9 **employee who may reasonably be expected to experience an**
10 **employment loss as a result of a proposed plant closing or mass**
11 **layoff.**
12 **Sec. 3. (a) As used in this chapter, "employer" means:**
13 **(1) an individual, a partnership, an association, a limited**
14 **liability company, a corporation, or a business trust or an**
15 **officer of any of these entities employing at least fifty (50) but**
16 **less than one hundred (100) individuals in Indiana;**
17 **(2) the state;**



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(3) an agency, an officer, or a commission of the state employing at least fifty (50) individuals;

(4) a political subdivision; or

(5) an agency, a department, an officer, or a commission of a political subdivision employing at least fifty (50) individuals.

(b) The term does not include:

(1) the federal government;

(2) a corporation wholly owned by the federal government; or

(3) an Indian tribe.

Sec. 4. (a) As used in this chapter, "employment loss" means:

(1) an employment termination, other than:

(A) a discharge for cause;

(B) voluntary departure; or

(C) retirement;

(2) a layoff exceeding six (6) months; or

(3) a reduction in hours of work of more than fifty percent (50%) during each month of a six (6) month period.

(b) The term does not include a closing or layoff that is the result of the relocation or consolidation of part or all of an employer's business if, before the closing or layoff:

(1) the employer offers to transfer the affected employee to a different site of employment within a reasonable commuting distance with a break in employment of not more than six (6) months; or

(2) the employer offers to transfer the affected employee to any other site of employment regardless of distance with a break in employment of not more than six (6) months, and the affected employee accepts the transfer within thirty (30) days after the later of:

(A) the offer; or

(B) the closing or layoff.

Sec. 5. As used in this chapter, "mass layoff" means a reduction of force that:

(1) is not the result of a plant closing; and

(2) results in an employment loss at a single site of employment during any thirty (30) day period of at least twenty (20) affected employees.

Sec. 6. As used in this chapter, "municipality" has the meaning set forth in IC 36-1-2-11.

Sec. 7. As used in this chapter, "plant closing" means the permanent or temporary shutdown of:

(1) a single site of employment; or

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(2) one (1) or more facilities or operating units within a single site of employment;
 if the shutdown results in an employment loss at the single site of employment during any thirty (30) day period of at least twenty (20) affected employees.

Sec. 8. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 9. As used in this chapter, "regular rate" has the meaning set forth in IC 22-2-2-4(l)(3).

Sec. 10. As used in this chapter, "representative" means an exclusive representative of employees:

- (1) within the meaning of Section 152(4) or 159(a) of the National Labor Relations Act (29 U.S.C. 151 et seq.);
- (2) within the meaning of Section 151 of the Railway Labor Act (45 U.S.C. 151 et seq.); or
- (3) of any labor organization formally or effectively recognized by a state or local government or agency as a representative of any unit of employees for purposes of:

- (A) bargaining; or
- (B) grievance representation.

Sec. 11. (a) This chapter does not apply to a plant closing or mass layoff in the following cases:

- (1) The plant closing is:
 - (A) of a temporary facility; or
 - (B) the result of the completion of a particular project or undertaking;
 and the affected employee was hired with the understanding that the employment was limited to the duration of the facility, project, or undertaking.
- (2) The plant closing or mass layoff constitutes a strike or lockout not intended to evade the requirements of this chapter.

(b) An employer is not required to provide the written notice required by section 12 of this chapter when permanently replacing a person who is considered an economic striker under the National Labor Relations Act (29 U.S.C. 151 et seq.).

Sec. 12. (a) An employer shall serve written notice of a plant closing or mass layoff not later than sixty (60) days before the date of the plant closing or mass layoff to:

- (1) a representative of an affected employee or, if there is no representative at the time of the notice, each affected employee;

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(2) the department of workforce development; and

(3) the executive of:

(A) each municipality; or

(B) in an unincorporated area, the county;
in which the plant closing or mass layoff is to occur.

(b) The:

(1) mailing of notice to an affected employee's last known
address; or

(2) inclusion of the notice with the affected employee's
paycheck;

is an acceptable method for fulfilling the employer's obligation to
give notice to each affected employee.

**Sec. 13. (a) An employer is not required to provide the written
notice required by section 12 of this chapter if:**

(1) at the time that the notice would have been required:

(A) the employer was actively seeking capital or business
that, if obtained, would enable the employer to avoid or
postpone the plant closing or mass layoff; and

(B) the employer:

(i) reasonably; and

(ii) in good faith;

believed that giving the notice would have precluded the
employer from obtaining the needed capital or business;

(2) the plant closing or mass layoff is caused by business
circumstances that were not reasonably foreseeable as of the
time that the notice would have been required; or

(3) the plant closing or mass layoff is the result of a natural
disaster.

(b) An employer shall give as much notice as is practicable
under the circumstances described in subsection (a) to an affected
employee, including a brief statement of the basis for reducing the
notice period.

**Sec. 14. A layoff of more than six (6) months that at its outset
was announced as a layoff of six (6) months or less shall be treated
as an employment loss under this chapter, unless:**

(1) the extension of the layoff beyond six (6) months is the
result of business circumstances, including unforeseeable
changes in price or cost, not reasonably foreseeable at the
time of the initial layoff; and

(2) notice is given to an affected employee at the time that an
extension of the layoff beyond six (6) months becomes
reasonably foreseeable to the employer.

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1 **Sec. 15. Employment losses of more than one (1) group of**
 2 **employees at a single site of employment, each of which is less than**
 3 **the minimum number of affected employees specified in section 5**
 4 **or 7 of this chapter for a plant closing or mass layoff but that**
 5 **together exceed that minimum number and occur within any**
 6 **ninety (90) day period, are considered to be a plant closing or mass**
 7 **layoff for purposes of this chapter, unless the employer**
 8 **demonstrates that the employment losses are:**

- 9 (1) the result of separate and distinct actions and causes; and
 10 (2) not an attempt by the employer to evade the requirements
 11 of this chapter.

12 **Sec. 16. (a) In the case of a sale of part or all of an employer's**
 13 **business:**

- 14 (1) up to and including the effective date of the sale, the seller;
 15 or

16 (2) after the effective date of the sale, the purchaser;
 17 **is responsible for providing the written notice required by section**
 18 **12 of this chapter.**

19 (b) Notwithstanding any other provision of this chapter, an
 20 individual who is an employee of the seller as of the effective date
 21 of the sale is considered an employee of the purchaser immediately
 22 after the effective date of the sale for the purpose of receiving the
 23 written notice required by section 12 of this chapter.

24 **Sec. 17. (a) As used in this section, "aggrieved employee" means**
 25 **an employee who:**

- 26 (1) experienced employment loss as a result of a plant closing
 27 or mass layoff conducted by the employee's employer; and
 28 (2) as a result of the employer's failure to give the written
 29 notice required by section 12 of this chapter, did not receive
 30 the required notice, either directly or through the employee's
 31 representative.

32 (b) If an employer violates this chapter, an aggrieved employee
 33 may commence an action:

- 34 (1) for the aggrieved employee;
 35 (2) on behalf of other employees similarly situated; or
 36 (3) both for the aggrieved employee and on behalf of other
 37 employees similarly situated;

38 **in a court of the county in which the violation is alleged to have**
 39 **occurred or in which the employer transacts business.**

40 (c) The court shall award the following to each aggrieved
 41 employee who suffers an employment loss as a result of the
 42 employer's violation of this chapter:

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(1) Back pay for each day of the violation at a rate of compensation not less than the greater of:

(A) the average regular rate received by the employee during the three (3) years before the date of the plant closing or mass layoff; or

(B) the final regular rate received by the employee.

(2) Benefits under an employee welfare benefit plan described in 29 U.S.C. 1002, including the cost of medical expenses incurred during the employment loss that would have been covered under the employee benefit plan if the employment loss had not occurred.

(3) Costs and reasonable attorney's fees.

(d) An employer's liability under subsection (c) is calculated for the period of the violation, up to a maximum of sixty (60) days, but not more than fifty percent (50%) of the number of days that the employee was employed by the employer.

(e) The amount for which an employer is liable under this section to an aggrieved employee is reduced by the following:

(1) Wages paid by the employer to the employee for the period of the violation.

(2) A voluntary and unconditional payment by the employer to the employee that is not required by a legal obligation.

(3) A payment by the employer to a third party or trustee, including, but not limited to:

(A) premiums for health benefits; or

(B) payments to a defined contribution pension plan; on behalf of and attributable to the employee for the period of the violation.

(4) A monetary amount equal to the amount of service credited to the employee for all purposes under a defined benefit pension plan for the period of the violation.

(f) An employer that violates this chapter with respect to the notice required to be given to:

(1) the department of workforce development;

(2) a municipality; or

(3) in an unincorporated area, a county;

under section 12(a) of this chapter commits a Class C infraction for each day that the violation occurs, up to a maximum of sixty (60) days.

(g) Except as provided in section 20 of this chapter, the remedies provided for in this section are the exclusive remedies for any violation of this chapter.

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1 **Sec. 18. It is a defense to a violation of this chapter that:**

2 (1) the act or omission that constituted a violation of this
3 chapter was in good faith; and

4 (2) the employer had reasonable grounds for believing that
5 the act or omission was not a violation of this chapter.

6 **Sec. 19. A court does not have authority to enjoin a plant closing
7 or mass layoff for a violation of this chapter.**

8 **Sec. 20. (a) The rights and remedies provided to employees by
9 this chapter are:**

10 (1) in addition to, and not instead of, any other contractual or
11 statutory rights and remedies of the employees; and

12 (2) not intended to alter or affect those other rights and
13 remedies;

14 **except that the period of notification required by this chapter runs
15 concurrently with any period of notification required by contract
16 or any other statute.**

17 **(b) A notice given by an employer that meets the requirements
18 of the federal Worker Adjustment and Retraining Notification Act
19 (29 U.S.C. 2101 et seq.) meets the requirements of this chapter.**

20 **Sec. 21. The commissioner of the department of workforce
21 development may adopt rules under IC 4-22-2 to implement this
22 chapter, including uniform standards by which employers may
23 provide for appropriate service of notice required by this chapter.**

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